

CHAPTER 73A

PUBLIC CONTRACTS AND BONDS

[P]

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73A.1 Definitions.

1. “*Appeal board*” as used in this chapter means the state appeal board, composed of the auditor of state, treasurer of state, and the director of the department of management.

2. “*Municipality*” as used in this chapter means township or the state fair board.

3. “*Public improvement*” as used in this chapter means a building or other construction work to be paid for in whole or in part by the use of funds of any municipality.

[C24, 27, 31, 35, 39, §351; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, S81, §23.1; 81 Acts, ch 117, §1001]

83 Acts, ch 96, §157, 159; 85 Acts, ch 195, §5; 86 Acts, ch 1245, §311

C93, §73A.1

2005 Acts, ch 179, §148; 2006 Acts, ch 1017, §19, 42, 43

[P] State appeal board, §24.26

73A.2 Notice of hearing.

Before any municipality shall enter into any contract for any public improvement to cost in excess of the competitive bid threshold in section 26.3, or as established in section 314.1B, the governing body proposing to make the contract shall adopt proposed plans and specifications and proposed form of contract, fix a time and place for hearing at the municipality affected or other nearby convenient place, and give notice by publication in at least one newspaper of general circulation in the municipality at least ten days before the hearing.

[C24, 27, 31, 35, 39, §352; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, S81, §23.2; 81 Acts, ch 28, §1]

C93, §73A.2

2006 Acts, ch 1017, §20, 42, 43

73A.3 Objections — hearing — decision.

At such hearing, any person interested may appear and file objections to the proposed plans, specifications or contract for, or cost of such improvement. The governing body of the municipality proposing to enter into such contract shall hear said objections and any evidence for or against the same, and forthwith enter of record its decision thereon.

[C24, 27, 31, 35, 39, §353; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §23.3]

C93, §73A.3

73A.4 Appeal.

Interested objectors in any municipality equal in number to one percent of those voting for the office of president of the United States or governor, as the case may be, at the last general election in said municipality, but in no event less than twenty-five, may appeal from

the decision to the appeal board by serving notice thereof on the clerk or secretary of such municipality within ten days after such decision is entered of record.

The notice shall be in writing and shall set forth the objections to such decision and the grounds for such objections; provided that at least three of the persons signing said notice shall have appeared at the hearing and made objection, either general or specific, to the adoption of the proposed plans, specifications or contract for, or cost of such improvement.

[C24, 27, 31, 35, 39, §354; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §23.4]

C93, §73A.4

73A.5 Information certified to appeal board.

In case an appeal is taken, such body shall forthwith certify and submit to the appeal board for examination and review the following:

1. A copy of the plans and specifications for such improvement.
2. A copy of the proposed contract.
3. An estimate of the cost of such improvement.
4. A report of the kind and amount of security proposed to be given for the faithful performance of the contract and the cost of such security.
5. A copy of the objections, if any, which have been urged by any taxpayer against the proposed plans, specifications or contract, or the cost of such improvement.
6. A separate estimate of the architect's or engineer's fees and cost of supervision.
7. A statement of the taxable value of the property within the municipality proposing to make such improvement.
8. A statement of the several rates of levy of taxes in such municipality for each fund.
9. A detailed statement of the bonded and other indebtedness of such municipality.
10. In case of state institutions and state fair board, the last three requirements may be omitted.

[C24, 27, 31, 35, 39, §355; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §23.5]

C93, §73A.5

73A.6 Notice of hearing on appeal.

The appeal board shall forthwith fix a time and place in the municipality or nearby convenient place for hearing said appeal, and notice of such hearing shall be given by certified mail to the executive officer of the municipality, and to the first five persons whose names appear upon the notice of appeal, at least ten days before the date fixed for such hearing.

The hearing on contracts for the state institutions and state fair board shall be at the seat of government.

[C24, 27, 31, 35, 39, §356; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §23.6]

C93, §73A.6

73A.7 Hearing and decision.

At such hearing, the appellants and any other interested person may appear and be heard. The appeal board shall examine, with the aid of competent assistants, the entire record, and if it shall find that the form of contract is suitable for the improvement proposed, that the improvement and the method of providing for payment therefor is for the best interests of the municipality and the taxpayers therein, and that such improvements can be made within the estimates therefor, it shall approve the same. Otherwise, it may reject the same as a whole or, it shall recommend such modifications of the plans, specifications, or contract, as in its judgment shall be for the public benefit, and if such modifications are so made, it shall approve the same.

The appeal board shall certify its decision to the body proposing to enter into such contract unless it shall have rejected the same as a whole, whereupon the municipality shall advertise for bids and let the contract subject to the approval of the appeal board which shall at once render its final decision thereon and transmit the same to the municipality.

[C24, 27, 31, 35, 39, §357; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §23.7]

C93, §73A.7

73A.8 Enforcement of performance.

After any contract for any public improvement has been completed and any five persons interested request it, the appeal board shall examine into the matter as to whether or not the contract has been performed in accordance with its terms, and if on such investigation it finds that said contract has not been so performed, and so reports to the body letting such contract, it shall at once institute proceedings on the contractor's bond for the purpose of compelling compliance with the contract in all of its provisions.

[C24, 27, 31, 35, 39, §358; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §23.8]
C93, §73A.8

73A.9 Nonapproved contracts void.

If an appeal is taken, no contract for public improvements shall be valid unless the same is finally approved by the appeal board. In no case shall any municipality expend for any public improvement any sum in excess of five percent more than the contract price without the approval of the appeal board.

[C24, 27, 31, 35, 39, §359; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §23.9]
C93, §73A.9

73A.10 Witness fees — costs.

Witness fees and mileage for witnesses on hearing appeals shall be the same as in the district court; but objectors or appellants shall not be allowed witness fees or mileage. Costs of hearings and appeals shall be paid by the municipality.

[C24, 27, 31, 35, 39, §361; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §23.10]
C93, §73A.10
[P] Witness fees, §622.69

73A.11 Report on completion.

Upon the completion of the improvement the executive officer or governing board of the municipality shall file with the appeal board a verified report showing:

1. The location and character of the improvement.
2. The total contract price for the completed improvement.
3. The total actual cost of the completed improvement.
4. By whom, if anyone, the construction was supervised.
5. By whom final inspection was made.
6. Whether or not the improvement complies with its contract, plans, and specifications.
7. Any failure of the contractor to comply with the plans and specifications.

[C24, 27, 31, 35, 39, §362; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §23.11]
C93, §73A.11

73A.12 Issuance of bonds — notice.

Before any municipality shall institute proceedings for the issuance of any bonds or other evidence of indebtedness payable from taxation, excepting such bonds or other evidence of indebtedness as have been authorized by a vote of the people of such municipality, and except such bonds or obligations as it may be by law compelled to issue, a notice of such action, including a statement of the amount and purpose of said bonds or other evidence of indebtedness shall be published at least once in a newspaper of general circulation within such municipality at least ten days before the meeting at which it is proposed to issue such bonds.

[C24, 27, 31, 35, 39, §363; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §23.12]
C93, §73A.12
[P] Sixty percent vote required, §75.1

73A.13 Objections.

At any time before the date fixed for the issuance of such bonds or other evidence of indebtedness, interested objectors in any municipality equal in number to one percent of those voting for the office of president of the United States or governor, as the case may be, at the last general election in said municipality, but in no event less than twenty-five, may

file a petition in the office of the clerk or secretary of the municipality setting forth their objections thereto.

[C24, 27, 31, 35, 39, §364; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §23.13]
C93, §73A.13

73A.14 Notice of hearing.

Upon the filing of any such petition, the clerk or secretary of such municipality shall immediately certify a copy thereof, together with such other data as may be necessary in order to present the questions involved, to the appeal board, and upon receipt of such certificate, petition, and information, it shall fix a time and place for the hearing of such matter, which shall be not less than ten nor more than thirty days thereafter. Said hearing shall be held in the municipality in which it is proposed to issue such bonds or other evidence of indebtedness, or in some other nearby convenient place fixed by the appeal board. Notice of such hearing shall be given by certified mail to the executive officer of the municipality and to the five persons whose names first appear on the petition at least ten days before the date of such hearing.

[C24, 27, 31, 35, 39, §365; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §23.14]
C93, §73A.14

73A.15 Decision.

The appeal board shall determine the matters involved in such appeal. Its decision shall be certified to the executive officer of the municipality affected. Judicial review of the action of the appeal board may be sought in accordance with the terms of the Iowa administrative procedure Act, chapter 17A.

In case there is no appeal, the board of the municipality affected may issue such bonds or other evidence of indebtedness, if legally authorized so to do, in accordance with the proposition published, but in no greater amount.

In case of an appeal, the municipality may issue such bonds or other evidence of indebtedness in accordance with the decision of the appeal board.

[C24, 27, 31, 35, 39, §366; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §23.15]
C93, §73A.15
2003 Acts, ch 44, §114

73A.16 Bonds and taxes void.

Any bonds or other evidence of indebtedness issued contrary to the provisions of this chapter, and any tax levied or attempted to be levied for the payment of any such bonds or interest thereon, shall be null and void.

[C24, 27, 31, 35, 39, §367; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §23.16]
C93, §73A.16

73A.17 Unpaid revenue bonds — effect.

It shall be lawful for any municipality to issue revenue bonds, the principal and interest of which are to be paid solely from revenue derived from the operations of the project for which such bonds are issued, notwithstanding that there are other revenue bonds remaining unpaid which have not matured, provided payment of principal and interest of such other revenue bonds is not impaired thereby.

[C62, 66, 71, 73, 75, 77, 79, 81, §23.17]
C93, §73A.17

73A.18 When bids required — advertisement — deposit.

When the estimated total cost of construction, erection, demolition, alteration or repair of a public improvement exceeds the competitive bid threshold in section 26.3, or as established in section 314.1B, the municipality shall advertise for bids on the proposed improvement by two publications in a newspaper published in the county in which the work is to be done. The first advertisement for bids shall be not less than fifteen days prior to the date set for receiving bids. The municipality shall let the work to the lowest responsible bidder submitting a sealed

proposal. However, if in the judgment of the municipality bids received are not acceptable, all bids may be rejected and new bids requested. A bid shall be accompanied, in a separate envelope, by a deposit of money or a certified check or credit union certified share draft in an amount to be named in the advertisement for bids as security that the bidder will enter into a contract for the doing of the work. The municipality shall fix the bid security in an amount equal to at least five percent, but not more than ten percent of the estimated total cost of the work. The checks, share drafts or deposits of money of the unsuccessful bidders shall be returned as soon as the successful bidder is determined, and the check, share draft or deposit of money of the successful bidder shall be returned upon execution of the contract documents.

[C62, 66, 71, 73, 75, 77, 79, 81, S81, §23.18; 81 Acts, ch 28, §2]

84 Acts, ch 1055, §3

C93, §73A.18

2006 Acts, ch 1017, §21, 42, 43

73A.19 Sale of municipal bonds without hearing or contract.

Any other law to the contrary notwithstanding, any municipality may authorize, sell, issue and deliver its bonds without regard to whether or not notice and hearing on the plans, specifications and form of contract for the public improvement to be paid for in whole or in part from the proceeds of said bonds has theretofore been given, and without regard to whether or not any contract has theretofore been awarded for the construction of said improvement. The foregoing provision shall not apply to bonds which are payable solely from special assessment levied against benefited property.

[C66, 71, 73, 75, 77, 79, 81, §23.19]

C93, §73A.19

73A.20 Bid bonds.

Notwithstanding any other provisions of the Code, any contracting authority may authorize the use of bid bonds executed by corporations authorized to contract as surety in Iowa and on a form prescribed by the contracting authority, in lieu of certified or cashiers checks or any other form of security otherwise required of a bidder to accompany a bid on a public improvement project. The full amount of the bid bond shall be forfeited to the contracting authority in liquidation of damages sustained in the event that the bidder fails to execute the contract as provided in the specifications or by law in the same manner and amount as other forms of authorized security.

[C73, 75, 77, 79, 81, §23.20]

C93, §73A.20

73A.21 Reciprocal resident bidder preference by state, its agencies, and political subdivisions.

1. For purposes of this section:

a. “*Public improvement*” means public improvements as defined in section 73A.1 and includes road construction, reconstruction, and maintenance projects.

b. “*Resident bidder*” means a person authorized to transact business in this state and having a place of business for transacting business within the state at which it is conducting and has conducted business for at least six months prior to the first advertisement for the public improvement and in the case of a corporation, having at least fifty percent of its common stock owned by residents of this state. If another state or foreign country has a more stringent definition of a resident bidder, the more stringent definition is applicable as to bidders from that state or foreign country.

2. Notwithstanding this chapter, chapter 73, chapter 309, chapter 310, chapter 331, or chapter 384, when a contract for a public improvement is to be awarded to the lowest responsible bidder, a resident bidder shall be allowed a preference as against a nonresident bidder from a state or foreign country which gives or requires a preference to bidders from that state or foreign country. The preference is equal to the preference given or required by the state or foreign country in which the nonresident bidder is a resident.

3. This section applies to the state, its agencies, and any political subdivisions of the state.

4. If it is determined that this may cause denial of federal funds which would otherwise be available, or would otherwise be inconsistent with requirements of federal law, this section shall be suspended, but only to the extent necessary to prevent denial of the funds or to eliminate the inconsistency with federal requirements.

84 Acts, ch 1045, §1; 85 Acts, ch 67, §5

C85, §23.21

C93, §73A.21

2008 Acts, ch 1031, §86

[P] See also §8A.311